Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1997

WILLIAM A. FAIRFULL,

Petitioner,

v.

MAJOR JIM LEE,
and
TROOPER ANTHONY BAKER,
TROOP D, FLORIDA HIGHWAY
PATROL,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Question #1:

Whether a "Petition for Redress of Grievance" to a United States District Court at *Title 42 USC, § 1983* requesting a hearing to determine "proximate cause" for a complaint, is protected by the Constitutional guarantees furnished by the First Amendment, USCA?

Question #2

Whether the same "petition" is subjected to collateral attack on procedural grounds by a defendant; or is the Court required to hear the grievance based on First Amendment authority and guarantees?

Question #3

Whether the exhaustion of State Court remedies is a prerequisite to a petition at *42 USC, § 1983*, when the state court of last resort has decided the issue in a manner which has triggered the instant case at bar and in a manner which calls its practice into Constitutional scope?

Question #4

Whether the United States Court of Appeals can rely on the *Heck* rationale to deny an appeal when it is the Constitutionality of the venue of conviction itself that is called into question in a petition at *USC Title 42, § 1983* and when that petition contends that it is not clear that the state law provides the defendant with a "remedy sufficiently adequate to preclude prior resort to a federal court for protection of his federal rights?" Louis McNeese, Jr. v. Board of Education for School District 187, Cahokia, Illinois, et al, 373 US 668, 10 L ed 2d 622, 83 S Ct 1433

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE ELEVENTH CIRCUIT

William A. Fairfull petitions for a writ of certiorari to review the judgement and opinion of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The 30-October-1997 and 02-February-1998 opinions of the Court of Appeals, whose judgement is herein sought to be reviewed, is reported at CA# 97-2467. The decision is unpublished and is reprinted in the separate Appendix to this Petition. The prior opinion of 05-March-1997 of the United States District Court for the Middle District of Florida, Orlando Division, is unpublished,

and is reprinted in the separate Appendix to this Petition.

JURISDICTION

The district court has jurisdiction by virtue of its duty to uphold the Constitutional guarantees of the citizens of the United States. Additionally, Title 42 § 1983 allows for the following:

> ". . ., shall be liable to the party injured in an action at law, suit in equity, or other **proper proceeding** for redress. (Emphasis ours).

Additionally, Article VI Clause 2 indicates the sovereignty of the Constitution in regard to the vindication of rights of the individual citizen to petition the government for said vindication. In short; Federal Courts have a duty to uphold the Constitution, and the individual rights of the citizens of the United States, *Smith v. Grady* id.

CONSTITUTIONAL PROVISIONS, TREATISES, STATUTES, RULES, AND REGULATIONS INVOLVED

CONSTITUTIONAL PROVISIONS

1st Amendment

Congress shall make no law . . . ., abridging the right to petition the government for a redress of grievances.

5th Amendment

No person shall . . . . be deprived of life, liberty, or property, without **due process** of law.

14th Amendment, section 1

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or

enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

TREATISES--"RIGHT TO PETITION GOVERNMENT"
30 L Ed. 2d 914

STATUTES:

Florida Uniform Disposition of Traffic Infractions Act (Traffic Act) supported by, *State v. Johnson* 345 So. 2d 1069.

RULES AND REGULATIONS INVOLVED.

Rules of the Florida Traffic Court.

STATEMENT OF THE CASE

This cause stems from a traffic stop effectuated by Anthony J. Baker FHP# 1497, on 06-April-1996. The petitioner did not believe that there was probable cause to be arrested for speeding. After careful consideration and largely because of *McNeese v. Board of Education* id. the petitioner submitted his "Petition to a United States District Court for Redress of Grievance". It was never intended by William A. Fairfull that the action was to be a lawsuit. The relief that was sought is hereby quoted:

> "**V. Relief Sought**
>
> The Petitioner hereby requests that this Honorable Court, having jurisdiction of the subject matter and parties hereto, by the authority of *Title 42, usc § 1983* hold a hearing to determine if proximate cause obtains to file a civil complaint before the United States District Court for the Middle

District of Florida pursuant to the above captioned *"Title 42, USC § 1983, Civil Action for Violation of Civil Rights"*.

After several procedural moves by both parties, the district court dismissed the cause on 05-March-1997. The petitioner filed notice of appeal on 14-April-1997. The 11th circuit case# is 97-2467.

After both parties filed briefs, the 11th circuit affirmed the district court's ruling on 30-October-1997. The petitioner moved for en banc consideration and was denied on 02-February-1998.

REASONS FOR GRANTING WRIT

I. The district and circuit courts deprived the petitioner of his First Amendment guarantees

The petitioner's intention as delineated by his "petition" (R1-1), was to have a evidentiary hearing, to plumb the depths of the controversy that arose on 06-April-1996, when William A. Fairfull was arrested by Anthony J. Baker, FHP #1497. The intention of the petitioner was not to file a civil complaint via the original action; but rather to have the district court plumb the depths of the allegations propounded by the petition for redress filed by William A. Fairfull on 17-September-1996. The intention of the petitioner, William A. Fairfull, was to establish his cause of action via a hearing at the district court in order to save the court time if the facts did not support his contention that he was deprived of constitutional guarantees by the Florida highway patrol and because of the Florida Uniform Disposition of Traffic Infractions Act (traffic act). The petitioner relied on *McNeese* as basis for his action, because the traffic act is purportedly an administrative function of the state of Florida, *State v. Johnson 345 So. 2d 1069 (1977)*.

The issue raised by the district court; that the action was

governed by Rule 8(a) Fed. R. Civ. Proc. was not valid, in the petitioner's opinion; and if **not valid**, it thereby rendered the district court's judgement of 05-March-1997 as egregious error. This very Supreme Court has determined that the right to petition government is sanctified. Quoting, then, from "right to petition government" 30 L. Ed. 2d 914:

> "The indispensable democratic freedoms secured by the First Amendment give these liberties a sanctity and a sanction not permitting dubious intrusions, the court said, and any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger."id.

Quoting also from Black's:

> " **Petition.** A written address, embodying an application or prayer from the person or persons preferring it, to the power, body or person to whom it is presented, for the exercise of his or their authority in the redress of some wrong, or the grant of some favor, privileges, or license. A formal written request addressed to some governmental authority. The right of the people to petition for redress of grievances is guaranteed by the First Amendment, U.S. Constitution."id.

It can be seen very clearly then that the "petition" filed by William A. Fairfull was not perceived in the proper light by the district court. Likewise, at the 11th circuit court of appeals; the "petition" was viewed in the wrong light. Quoting then from the text of the judgement rendered by the 11th circuit on 30-October-1997:

> "Fairfull's procedural argument regarding the district court's refusal to hold a hearing has no merit. See Fed. R. Civ. Proc. 78 (permitting, pursuant to local rule, determinations of motions without oral argument); . . . " (page 4 para3).

The error by the circuit court is twofold.

> 1. The petitioner did not request a hearing on "motion"; but as part of the original cause i.e. "petition".
> 2. The "petition" should not have been subjected to the rules of court; the rules of court being acts of congress.

If the rules of court are congressional acts, then the "petition" filed by William A. Fairfull on 17-September-1996 could not be subjected to the authority of the U.S. Code because of this:

> "Congress shall make no law. . . abridging the freedom of speech . . . and to petition the government for redress of grievance."

Both in the court of first instance, and in the court of next resort; William A. Fairfull's Constitutional right to petition was abridged. This is precisely why William A. Fairfull is petitioning this court of last resort to restore these rights to this petitioner

II. The circuit utilized the wrong authority as basis for its

judgement of 30-October-1997, and its order denying en banc consideration of 02-February-1998

The 11th circuit cited *Heck* as its authority for affirming the district court's order of 05-March-1997. William A. Fairfull believes that *Heck* would be conditionally dissimilar to William A. Fairfull's position in the instant cause, that was presented to the district court on 17-September-1996, for two reasons:

> 1. Heck was incarcerated at the time of his appeal, on a criminal charge.
> 2. The "traffic act", "decriminalized" proceedings under the jurisdiction of the state court.

See, *State v. Johnson*, id.

As stated previously, the "traffic act" supposedly rendered the proceedings in the traffic court as civil in nature; thereby triggering the authority of *McNeese*, not *Heck*.

Additionally, prior to his appearance at the state court on 24-September-1997, the petitioner filed a "motion to dismiss without prejudice", (see R1-6) with the state court citing the pendant jurisdiction of the Federal Court. Further along in the state court proceeding when the petitioner was being deprived of due process by the state court; the petitioner sought injunctive relief from the district court but was denied such relief.

At any event, William A. Fairfull believes that civil rights deprivations are federal questions, that must be redressed in Federal Court.

CONCLUSION

I. Civil rights deprivations are federal questions.

For the first time in his life of 58 years, William A. Fairfull filed

a petition to his government to have said government address a perceived injury to his civil rights guaranteed under the U.S. Code. What was the result?

In the court of first instance, the district court allowed conduct by the defendants that was egregiously unconstitutional. Additionally, when William A. Fairfull sought injunctive protection from the same court; he was rebuffed on 26-December-1996.

At the court of next resort, likewise his First Amendment guarantees were ignored, and the decision rendered on 30-October-1997 utilized the wrong authority, *Heck*, and refused to recognize that William A. Fairfull had taken steps to even cover the *Heck* authority (William A. Fairfull's suggestion of en banc consideration denied 02-February-1998).

In culmination; William A. Fairfull has come to this conclusion:

> The district court and the circuit court of appeals have deprived the petitioner of his Constitutional guarantees as embodied in the 1st, 5th, and 14th Amendments U.S.C.A.

Accordingly, because of the reasons propounded by this petition, the petitioner prays that a Writ of Certiorari be granted.

Respectfully Submitt

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BEST AVAIL

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APPENDIX

Opinion of Court of Appeals,
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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 97-2467
Non-Argument Calendar

D. C. Docket No. 96-998-Civ-ORL-19

WILLIAM A. FAIRFULL,

Plaintiff-Appellant,

versus

JIM LEE, Major, Commander Troop D,
Florida Highway Patrol,
ANTHONY BAKER, Trooper #1497, Troop D,
Florida Highway Patrol,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(October 30, 1997)

Before BIRCH and CARNES, Circuit Judges, and FAY, Senior Circuit Judge.

PER CURIAM:

William A. Fairfull appeals the dismissal of his pro se civil rights complaint filed pursuant to 42 U.S.C. § 1983. Because Fairfull fails to state a claim for which relief can be granted, we affirm

FACTS:

Fairfull filed this civil rights action against Jim Lee and Anthony Baker, Florida Highway Patrol troopers. Fairfull's claim arose when Baker pulled him over for changing lanes and issued citations for speeding and failure to wear a seatbelt. In his amended complaint, Fairfull claimed that Baker did not have probable cause to pull him over, and did not "mirandize" him before issuing the traffic citations. He also claimed that Baker placed him in double jeopardy for issuing two citations during one traffic stop. Fairfull further contended that Baker forced him to sign the seatbelt citation implicitly threatening to take him to jail if he did not comply.

Fairfull argued that in Florida a traffic stop is an arrest and thus

he should have been provided with the basic constitutional guarantees. Fairfull further contended that changing lanes is not a violation of law, ands since he was not speeding, Baker did not have probable cause to stop him. Fairfull claimed that his civil rights were violated in the following ways: false arrest, deprivation of due process, failure to recite Miranda warning, illegal detention, harassment by a police officer, double jeopardy, and wrongful prosecution. Fairfull sought compensatory and punitive damages.

The defendants filed a motion to dismiss or, in the alterative, for a more definite statement. They argued, interalia, that they were "incapable of framing a response to the vague and discombobulated [p]etition." The district court granted the motion, finding that Fairfull "ha[d] failed to comply with the Federal Rule of Civil Procedure 8 (a),"but gave Fairfull 10 days to file an amended complaint. After Fairfull filed an amended complaint, the defendants filed a second motion to dismiss, arguing that the amended complaint did not

substantially differ from the original. The court then dismissed Fairfull's amended complaint with prejudice.

DISCUSSION:

When considering a dismissal for failure to state a claim pursuant to Fed. R. Civ. Proc. 12 (b) (6), the allegations in the complaint are accepted as true and the facts are construed in a light favorable to the plaintiff. Fortner v. Thomas, 983 F. 2d 1024, 1027 (11th Cir. 1993). A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him to relief. Conley v. Gibson, 335 U.S. 41, 45-56, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957).

Fairfull raised the following issues in his amended complaint: (1) lack of "probable cause"for the traffic stop; (2) lack of a Miranda warning; and (3) double jeopardy. These issues were resolved or could have been resolved during a state court proceeding, where

Fairfull was found guilty and fined for both traffic infractions. Pursuant to Heck v. Humphrey, 512 U.S. 477 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994), in order to recover damages for allegedly unconstitutional convictions, or for other harm caused by actions whose unlawfulness would render a conviction invalid, a § 1983 plaintiff must prove that the conviction has been reversed, expunged, declared invalid, or called into question by a writ of habeas corpus or the post-conviction proceeding. 512 U.S. at 486, 114 S. Ct. at 2372. Fairfull does not contend that the guilty verdict has been overturned or otherwise held invalid. Because proof of Fairfull's constitutional allegations would render the tickets and Fairfull's conviction invalid, we affirm the district court's dismissal of his complaint with prejudice. For purposes of clarification, however, we point out that if Fairfull's conviction is overturned, he would be free to file a new complaint alleging constitutional violations in federal court. See Heck, 512 U.S. at 489, 114 S. Ct. at

2373-74; Abella v. Rubino, 63 F. 3d 1063, 1065 (11th Cir. 1995) (affirming dismissal of complaint barred by Heck with prejudice with notation that new claim could be filed in the future if the Heck requirements are satisfied).

Fairfull also includes a list of other issues in his appellate brief, only some of which were presented to the trial court. The only issues that Fairfull develops are the district court's denial of a hearing and constitutionality of Florida's Traffic Act. Fairfull argues that his rights were violated because the district court did not have a hearing before dismissing his civil-rights complaint. Fairfull further contends that the Florida Uniform Disposition of Traffic Infractions Act ("Traffic Act") is unconstitutional because it does not provide a fair hearing, thus violating due process and equal protection.

Fairfull's procedural argument regarding the district court's refusal to hold a hearing has no merit. See Fed. R. Civ. P. 78 (permitting, pursuant to local rule, determinations of motions

without oral hearing); Erco Industries Ltd. v. Seaboard Coast Line R. Co., 644 F. 2d 424, 431 (5th Cir. May 4, 1981) (failure to hold oral argument to consider summary judgement motion not a violation of due process).

Normally we do not consider issues raised for the first time on appeal. Fairfull's challenge to the constitutionality of the Traffic Act was not presented to the district court. See Narey v. Dean, 32 F. 3d 1521, 1526-27 (11th Cir. 1994)). Moreover, the Traffic Act was held constitutional by the Florida Supreme Court in State of Florida v. Johnson, 345 So. 2d 1069 (1977).

The judgement of the district court is AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 97-2467
Non-Argument Calendar

District Court No. 96-998-Civ-ORL-19

WILLIAM A. FAIRFUL,

Plaintiff-Appellant,

versus

JIM LEE Major, Commander Troop D,
Florida Highway patrol,
ANTHONY BAKER, Trooper #1497, Troop D,
Florida Highway Patrol,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before BIRCH and CARNES, Circuit Judges, and FAY, Senior Circuit Judge.

JUDGMENT

This cause came to be heard on the transcript of the record from

the United States District Court for the Middle District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that **judgment** of said District Court in the cause be and that same is hereby **AFFIRMED;**

It is FURTHER ORDERED THAT plaintiff-appellant pay to the defendants-appellees, the costs of appeal to be taxed by the Clerk of Court.

Entered: October 30, 1997
For the Court: Thomas K. Kahn, Clerk
By: /s/Matt Davidson
Deputy Clerk

ISSUE AS MANDATE: 2/10/98

A10

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 97-2467

WILLIAM A. FAIRFULL,

Plaintiff-Appellant,

versus

JIM LEE, Major, Commander Troop D,
Florida Highway Patrol,
ANTHONY BAKER, Trooper, #1497, Troop D,
Florida Highway Patrol,

Defendants-Appellees.

On Appeal from the United States District Court for the
Middle District of Florida

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC
(Opinion _____, 11th Cir., 19__, _____ F. 2d _____).

Before: BIRCH and CARNES, Circuit Judges, and FAY, Senior Circuit Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate; Eleventh Circuit Rle 35-5), the Suggestion(s) of rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/Stanley F. Birch
United States Circuit Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

WILLIAM A. FAIRFULL,

Plaintiff,

vs. CASE NO. 96-998-CIV-ORL-19

MAJOR JIM LEE,
COMMANDER TROOP D,
FLORIDA HIGHWAY PATROL,
and
TROOPER ANTHONY BAKER, #1497,
TROOP D, FLORIDA HIGHWAY PATROL,

Defendants.

ORDER

This case was considered by the Court on Amended Complaint (Doc. No. 14, filed February 7, 1997), Defendant's Motion to Dismiss Plaintiff's Amended Complaint (Doc. No. 15, filed February 18, 1997) and Plaintiff's Response in Opposition to "Defendant's Motion to Dismiss Amended Complaint" (Doc. No. 16, filed February 18, 1997). This Court is one of limited

jurisdiction. Plaintiff must comply with Federal Rule of Civil Procedure 8(a). He has not. Plaintiff has previously been given leave to amend (Order of the Court at Doc. No. 13, filed February 4, 1997). Defendant's Motion to Dismiss Plaintiff's Amended Complaint (Doc. No. 15) is **GRANTED** and the dismissal is with prejudice.

DONE AND ORDERED at Orlando, Florida, this 5th day of March, 1997.

/s/ Patricia C. Fawsett
Patricia C. Fawsett
United States District Judge